IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 26 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESHKUMAR RAJARAM DELHIWALA

Versus

UNION OF INDIA

Appearance:

MR MB GANDHI for Petitioner

MR ASIM J PANDYA for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. This is an application under Section 34 of the Arbitration and Conciliation Act of 1996 for setting aside of an Award made by the Arbitrator appointed by the Chief Justice of this Court.

2. On behalf of the respondents, a preliminary objection has been raised as to the maintainability of this application for setting aside the Award under Section 34 of the Act of 1996. It is submitted that under Section 34 read with the definition of `Court', under clause (e) of sub-section (1) of Section 2 of the Act, the application would lie only to the competent civil court of original jurisdiction.

3. Learned counsel appearing for the petitioner plac....

support of his submissions that since the Arbitrator was appointed by the Chief Justice of this Court under Section 11 and there has been a complete non-compliance of that order, the application for setting aside the Award made by the Arbitrator would lie in this Court. Section 42 of the Act of 1996 reads as under :-

> "42. Jurisdiction
> Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

The reliance placed on Section 42 of the Act of 1996 appears to be misplaced as the Chief Justice in appointing an Arbitrator under Section 11 does not exercise any judicial power and is only exercising administrative powers as held by the Supreme Court in the decision in Ador Samia Pvt. Ltd. v. Peekay Holdings Ltd. and others, reported in AIR 1999 SC 3246. Since the application under Section 11 was made to the Chief Justice on administrative side, provisions of Section 42 of the Act are not attracted and this Court will have no jurisdiction to entertain the application for setting aside the arbitration Award. The preliminary objection raised on behalf of the respondents deserves to be upheld that the application for setting aside an Award is competent only before the principal civil court of original jurisdiction in the District, where the cause of action has arisen.

4. The learned counsel for the petitioner then submitted that if an application is now filed in the Civil Court, there would be objection based on limitation. The question about condonation of delay would be decided by the appropriate civil court as and when application is made. The counsel for the respondents states that, in the circumstances, as bona fide approach was made to this Court, he would not raise any objection of limitation if application is filed in the competent civil court.

5. As a result of the discussion aforesaid, the application is dismissed as not maintainable, with liberty to the petitioner to approach the appropriate competent civil court. Notice is discharged with no order as to costs.

24th March, 2000 (D.M. Dharmadhikari, C.J.)

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(apj)